S. HRG. 101-76

NOMINATION OF EDITH E. HOLIDAY AND DAVID W. MULLINS, JR.

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

EDITH E. HOLIDAY TO BE GENERAL COUNSEL, DEPARTMENT OF THE TREASURY AND DAVID W. MULLINS, JR., TO BE ASSISTANT SECRETARY, DOMESTIC FINANCE, DEPARTMENT OF THE TREASURY

MARCH 16, 1989

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NOMINATION OF EDITH E. HOLIDAY AND DAVID W. MULLINS, JR.

THURSDAY MARCH 16, 1989

U.S. SENATE,
COMMITTEE ON FINANCE,
WASHINGTON, DC

The hearing was convened, pursuant to notice, at 10:05 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Patrick Moynihan presiding.

Present: Senators Moynihan, Baucus, Bradley, Pryor, and Chafee.

[The press release announcing the hearing follows:]

[Press Release No. H-12, March 14, 1989]

SENATOR BENTSEN ANNOUNCES HEARING AND EXECUTIVE SESSION ON TREASURY NOMINATIONS

WASHINGTON, DC—Senator Lloyd Bentsen (D., Texas), Chairman, announced Tuesday that the Finance Committee will hold a hearing and executive session on the nominations of Edith E. Holiday to be General Counsel and David W. Mullins, Jr. to be Assistant Secretary (Domestic Finance) for the Department of the Treasury.

The hearing will be held on *Thursday, March 16, 1989 at 10:00 a.m.* in room SD-215 of the Dirksen Senate Office Building.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. I would like to say good morning to our witnesses, the nominees, our guests, and, of course, the members of the staff.

This is a regular hearing of the committee. There will be other members, of course, arriving over time. And we are here to consider the nominations, in the first instance, of Miss Edith Holiday to be General Counsel—she is General Counsel-Designate— of the Department of the Treasury, and Mr. David Mullins, who is Designate to be Assistant Secretary for Domestic Finance, again in the Department of the Treasury.

Our first nominee for consideration is Miss Holiday, who has been nominated for the position of General Counsel.

Miss Holiday has been with Treasury for six months, as I have learned here, serving as Assistant Secretary for Public Affairs and Public Liaison. Prior to joining the Treasury, she worked for the Bush Presidential Campaign, and was Director of the President's Commission on Executive, Legislative and Judicial Salaries. Having succeeded so brilliantly in that enterprise, she has now been promoted further to see what she does as General Counsel. If

you are as successful in enforcing the law as you were in raising the pay of the judges, you will no doubt be well remembered in our city.

She has practiced with the firms of Dow, Lohnes and Albertson and Reed, Smith, Shaw and McClay, and her undergraduate degrees and law degrees are from the University of Florida.

Our second nominee is Mr. David Mullins, who as I said, has been nominated to be Assistant Secretary for Domestic Finance. I have had the pleasure of meeting with Mr. Mullins and talked about some of the matters that concern our committee.

He also has been with the Treasury for some six months, and has been involved in the development of the President's proposal on the savings and loan crises. Prior to that, Professor Mullins was on the faculty of the Harvard Business School specializing in capital markets and corporate finance. He has received his undergraduate degree from Yale University and his graduate degrees from MIT.

And so we have before us the persons who have respectively solved the problem of Federal compensation and resolved the savings and loan crises. It is not every day we have the opportunity to welcome such distinguished persons.

After hearing from you, I am going to ask that we go beyond your subjects, and speak to the question the Washington Post reports this morning. Well I will just read the headline: "Cash crisis hobbles the IRS." I mean it is bad enough not to have the revenue we need in the Federal Government, but now its to the point where you don't even collect taxes, and it is reaching the point beyond absurdity. It has become a question of the good faith execution of the laws which is what the Executive Branch is expected to do.

Senator Baucus, it is very thoughtful of you to find time from your other assignments to be here this morning. And would you like to welcome our guests and make an opening statement?

Senator BAUCUS. I certainly welcome our guests, but I have no opening statement. Thank you, Mr. Chairman.

Senator MOYNIHAN. Thank you, sir.

Miss Holiday, would you proceed as you wish?

STATEMENT OF EDITH E. HOLIDAY, GENERAL COUNSEL-DESIGNATE, DEPARTMENT OF THE TREASURY

Ms. HOLIDAY. Thank you, sir. I do not have a prepared statement, Mr. Chairman, but I do wish to express my appreciation to the Chairman and to the members of this committee for the opportunity to appear today. I know of the tremendous workload before the Senate.

I am honored to have been nominated for the position general Counsel by the President, and to be supported in that role by Secretary Brady. If confirmed, I will cherish the opportunity to serve my country to the best of my ability.

My family is not present here today, but I wish to express my appreciation for the support of my husband, Terry Adamson, and my parents. And if confirmed, I hope to serve in a way that will make them proud, and my step-son, Terry, and my six-week old baby daughter, Kate, as well. And will hope to earn the respect and trust of the fine men and women of the Treasury Department.

I would be happy to answer any questions that you have or the members of the committee at this time.

Senator MOYNIHAN. Well nobody is going to accuse you of monopolizing our proceedings, Miss Holiday. If you are as brief or as directed to the point as your testimony, I think we will all be very much in your debt.

Mr. MULLINS. If it is all right with Senator Baucus, I thought we would hear from Mr. Mullins as well.

STATEMENT OF DAVID W. MULLINS, JR., ASSISTANT SECRETARY (DOMESTIC FINANCE)-DESIGNATE, DEPARTMENT OF THE TREASURY

Mr. MULLINS. Thank you, Mr. Chairman. I also do not have a long prepared statement. I would like to say that it is an honor to have been nominated by the President for this position. It is also an honor to appear before this committee, and we appreciate your taking time out of your busy day to share these hearings.

The Office of Domestic Finance involves a number of issues of particular importance at this time in our history, including financial institutions policy, federal finance, corporate financial policy and capital market securities regulations issues.

If I am confirmed, I look forward to the opportunity of working with Congress on these important issues, and look forward to the opportunity to serve this Administration and serve this country. And I would be happy to respond to any questions you might have.

Senator MOYNIHAN. Well may I say that, without in any way wishing to instruct or heckle, Dr. Mullins, it would have been helpful had you come forth with a little more prepared statement. The General Counsel is here too. But she doesn't have policy. She represents the Department, and carries out the laws and sc forth, but you are there to make policy about these matters. So why don't I just ask you a few questions.

Mr. MULLINS. Sure.

Senator MOYNIHAN. As you know, your position involves, among other things, handling the flow of funds into the Social Security Trust Fund and the general ordering of the Secretary's role as the Chairman of the Social Security Trustees. That would be correct.

Mr. MULLINS. Yes, Mr. Chairman.

Senator MOYNIHAN. Yes.

And we have talked about this. But I wonder if you would tell us your views about these events that took place in 1984 and 1985. Do I have that right? 1983 and 1985, when the debt ceiling having been reached—and let us be clear that is the responsibility of the Congress to raise it, and it did not—the trust funds were collected and were not deposited. And in consequence, we had an anomalous and unwelcomed situation, which you and I discussed, of course, yesterday.

Mr. MULLINS. Yes, Mr. Chairman.

Senator MOYNIHAN. Now we have had the pleasure of having our dear friend and colleague, Senator Nunn, arrive, who now I understand that Miss Holiday does in fact reside in Atlanta, Georgia. And, Senator Nunn, we welcome you. I think you might wish to make some remarks on behalf of Miss Holiday.

STATEMENT OF HON. SENATOR SAM NUNN, A U.S. SENATOR FROM GEORGIA

Senator NUNN. Thank you, Mr. Chairman. I am sorry I am late.

Senator CHAFEE. Such a peaceful, quiet hearing.

Senator Nunn, I have noted that. [Laughter.]

Senator NUNN. I might say that Ede may not want me here by her side today. I may not be quite an advantage these days. But, Mr. Chairman, and Senator Chafee and Senator Baucus, I will make my comments very brief.

I am pleased to be here today to present Ede Holiday to the members of the Finance Committee. Colleen and I have known Ede and her husband, Terry Adamson, for many years, and we have been friends, and admirers and supporters. And I am delighted that she has now been nominated as General Counsel of the Treasury Department.

She also has a new little girl here, born on February 2nd. I don't know whether you all have been acquainted with that. But Ede is a strong Republican, and her husband, Terry, is a strong Democrat, and I am going to have to work like heck to get Kate's vote. She is going to be torn in between. But we have a great Georgian here, and since October, 1988, she has been Assistant Secretary of Treasury for Public Affairs and Counselor to the Secretary. After he was confirmed last year to be the Secretary of Treasury, one of Nick Brady's first acts was to recommend Ede to the President for a responsible and very important position. By all accounts, she has done well in everything she has ever undertaken. She was Chief Counsel and National Financial and Operations Director for the Bush-Quayle 1988 Presidential campaign and we know how that came out. And she served as Director of Operations for George Bush for President.

Ede began her career in Washington with Nick Brady when he served in the Senate. As his Legislative Director and as the Executive Director for the Commission on Executive, Legislative, and Judicial Salaries which Nick chaired, Ede earned his respect and confidence, as well as the respect of everyone she worked with.

Prior to her public service career, Ede gained valuable experience as an attorney with the firm of Dow, Lohnes and Albertson in Atlanta and with Reed, Smith, Shaw and McClay here in Washington.

To sum it up, Mr. Chairman, she has both political savvy and legal skills to serve in this sensitive post with distinction. So it is a privilege for me as her home-state Senator and friend to recommend her to this committee, and to my colleagues in the Senate.

Senator MOYNIHAN. Senator Nunn, we very much thank you for the courtesy of coming by on Miss Holiday's behalf. I commented before you came that she has surely had a most distinguished career already in Washington. And it is to her that we owe thanks for having seen the Federal Judicial and Legislative pay raise enacted into legislation.

Senator NUNN. That's right. We can congratulate her on that modest accomplishment.

Senator MOYNIHAN. I mean, with that, how could you resist such a nomination? We thank you very much, Senator.

Ms. HOLIDAY. Thank you, sir.

Senator MOYNIHAN. Senator Chafee, would you like to make some opening statement?

Senator CHAFEE. No, sir, Mr. Chairman. I just wonder what is the procedure here. If these are agreeable, are you going to poll the members and then is there a chance that we could get them confirmed before we leave?

Senator MOYNIHAN. If Dr. Mullins and Miss Holiday give the right answers, we are going to poll the committee, and those members that are here can vote and the rest will be polled before the day is out. And I will, as Chairman in this case, order the nominations reported.

Senator CHAFEE. And then we can get unanimous consent perhaps to have them on—we are going to meet tomorrow, I believe.

Senator MOYNIHAN. We are going to vote on Mr. Cheney. I will certainly undertake to try that. I would want to speak to Mr. Bentsen and Mr. Packwood.

Senator CHAFEE. Well I just hope we can do that, Mr. Chairman.

Senator MOYNIHAN. Yes. I think we should. I will see that Mr. Bentsen and Mr. Packwood are consulted.

However, this is not over. I mean, quite seriously, Mr. Mullins. This is the first time we have had a new Assistant Secretary for Domestic Finance who can address this question of the events in 1984 and 1985, when in a situation in private life that would be found embarrassing in the extreme, if not on the edge of actionable, which is to say that payroll taxes were collected, were not converted into Treasury bonds and thereby deposited in the Social Security Trust Funds, but rather were used directly for the purposes of Government finance, as if they were general revenues to the Treasury as against trust funds.

I have stated that in my view the Secretary of the Treasury was in an intolerable situation there. He either had to violate the presumptions of his role as trustee or he had to let the United States go bankrupt. And it is not a situation that you should want to see your principal financial officer in government be in.

Still the point was not that this dilemma arose, but that no one chose to inform Congress that this was happening. In equally anomalous situation, the Treasury did not choose to inform the other trustees, the Secretary of Labor or the Secretary of Health and Human Services. In the 1983 legislation on Social Security, we created two public trustees, the public trustees put there for the most conspicuous obvious purpose to say now here are two people who will look to these matters from a point of view independent of the particular Administration in office or the Executive branch. They were not informed, to my great displeasure, when they learned about this, neither did they resign, which I think they should have done. That is why we would have reappointed them for life, but that is another matter.

We have tried to get legislation that would obviously require a notification, but much more importantly relieve the Secretary of this conflict, if you want to put it that way. Would you speak to that, sir? We are not talking about, well, any sum—even $10.00—would not be trivial, but we are talking about $28 billion in one instance of funds, of trust funds, treated as general revenue

Mr. Mullins. Yes, sir. Mr. Chairman, as you mentioned, we discussed this yesterday and I appreciate you bringing it to my attention. That happened obviously a long time before I was involved in Treasury and I certainly appreciate your bringing it to my attention. As you described it, it is behavior which would seem unacceptable in the role of trustees of a trust fund. I would like to assure you, Mr. Chairman, we have the utmost concern for maintaining a sound Social Security system. And I should also assure you that we will be forthcoming with Congress as we have in the first days of the Administration on other matters. I appreciate your bringing this issue to my attention, and I shall bring it to the Secretary's attention. We will probably have to face this problem of raising the debt limit this summer. So we will assure you that you will be fully informed on our watch.

Senator MOYNIHAN. That is very reassuring.

The Senate has on two occasions passed legislation addressing this matter and we haven't been able to persuade the House. Would you look at that legislation?

Mr. MULLINS. I will, Mr. Chairman.

Senator MOYNIHAN. And I guess what we want to hear from you is we want you to tell us what you think is the best thing to do.

Mr. MULLINS. All right.

Senator MOYNIHAN. And consult with your General Counsel as you do so. I think Miss Holiday would agree that if $28 billion disappeared from a trust fund in private life there would be inquiries, would there not? Your trustee could get his name in the papers that way.

Ms. HOLIDAY. No question about that, sir.

Senator MOYNIHAN. Well that is good to hear,

Mr. MULLINS. And I would be happy to review the situation, and review the legislation, and consider proposals to assure this will not happen again.

Senator MOYNIHAN. I am very pleased to hear that. I want to return to that question of the IRS, but now we are happy to have Senator Bradley and Senator Pryor. Senator Bradley.

Senator BRADLEY. No questions, Mr. Chairman.

Senator MOYNIHAN. Senator Pryor.

Senator PRYOR. Thank you very much, Mr. Chairman, for recognizing me. And it is a privilege today to strongly recommend both of these nominees for the respective positions. I do have a question for David Mullins, and this question relates to an article that appeared I believe March 5th in the Washington Post regarding a meeting in our embassy in London, at which time about 150 foreign potential investors were invited to come to our embassy to review the FSLIC assets that we now have on hand, encouraging European and other investors to purchase these assets.

Now I was a little disturbed about this. One, because we had no forewarning of such a meeting; two, it was Top Secret evidently; three, according to the Washington Post of March 5th—and I would like to ask unanimous consent, Mr. Chairman, to submit that article for the record. I put it in the Congressional Record yesterday,

Senator MOYNIHAN. Without objection.

[The article appears in the appendix.]

Senator PRYOR. I was deeply concerned that one of the quotes by the real estate person designated by FSLIC indicated that they could buy all of these properties in American at bargain prices. To me, it looked like a fire sale.

Now a wonder if you have any comments. Is this going to be our policy?

Mr. MULLINS. I do have some comments, Senator Pryor. I was not aware of that meeting. FSLIC is an independent agency, and we do not direct their activities currently. And in fact, I think currently all asset sales and dispositions are on hold pending the consideration of the S&L plan.

We feel our S&L plan is designed to assure proper oversight through the RTC and through the role of the Secretary of the Treasury and the Attorney General and the Federal Reserve overarching responsibility and perspective for the asset disposition activities. So one of the concerns we have had in the past is not enough effective oversight of the activities that have been going on in the S&L resolutions and the Resolution Trust Corporation, which is proposed in our legislation, will have a specific role of oversight to assure these sorts of things don't happen, and ensure we can carry out the resolutions in a manner which does not involve unnecessary asset dumping.

It is important that the oversight board has the perspective of the total problem so they can assess the impact of policies on the total asset values. It is in no one's interest to dump assets and cause losses. So in structuring our program, we have tried to do it in such a way to put in the safeguards and the oversight to assure that this problem is cleaned up with a minimum of asset dumping and chaos.

Senator PRYOR. Well, Mr. Mullins, today I am writing a letter to Secretary Brady urging him to declare a moratorium for the moment on these massive foreign sales. And I think that we need to pass legislation that the Administration has recommended, or near that recommendation—maybe some tinkering or amendments—and establish some rules and some regulations and some guidelines before we start going off and selling these assets all over the world.

The article was entitled, I might add, "The Selling of America." And I would like to say it is even worst than that. It is the taxpayers, it appears to me, subsidizing these foreign investors to come in here and buy these assets at fire sale prices. And I will be sending that letter to the Secretary today. I think a few of my colleagues will join with me to just to say, wait a minute. Let's stop. Wait. Let's see the legislation, how it works. And then if we want to pursue some sales, well we will look at it. But the problem with this crisis is every time we look up, it is after the fact to know what has gone on and to learn what has gone on. And that is a very, very disadvantageous position.

Mr. MULLINS. I would be happy to review your ideas. I would say that we have currently in this process that no deals are taking place. We are stopping. And we hope that if the S&L plan is passed, then there will be enough interest by people in the U.S., there will be enough certainty in the regulatory structure, enough

financial viability for the future, so that we will not have to go around the world and try to convince people to buy these assets.

Senator PRYOR. Mr. Chairman, if I might add a personal note relative to Mr. Mullins. His father, David W. Mullins,for over a decade was the President of the University of Arkansas. And Mr. Mullins and I have that in common. I have watched his progress as an individual, and now I am very proud to be one of his supporters to go to this position.

And let me if I might also say a personal word about Ede Holiday. Ede Holiday has been a personal friend of ours for a number of years. And even though she is a die in the wool Republican—I have tried to convince her of her wrongdoings in that field—she is married to a very strong Democrat from Atlanta, Georgia, a very fine individual, Terry Adamson. And, Mr. Chairman, I appreciate the opportunity to be here today to assist in this nomination, and I strongly hope that they will be approved.

Senator MOYNIHAN. If we were to follow the political progress of the young lady who has just joined her family, we would see how she turns out. Would it be better to establish whether the Democrat or Republican was the dominant person? [Laughter.]

Ms. HOLIDAY. War will be waged over this.

Senator CHAFEE. Could I ask a couple of questions, Mr. Chairman?

Senator MOYNIHAN. Would you please do?

Senator CHAFEE. I am straining a little bit here. Miss Holiday, you served with Secretary Brady on that President's Commission on Salaries.

Ms. HOLIDAY. Yes, sir.

Senator CHAFEE. And review the bidding a little bit for me,would you? Because I can't remember all the details. What happened that year? You came forward with a recommendation and we enacted it, didn't we? Or close thereto.

Ms. HOLIDAY. This was the 1984-85 Commission which proposed legislation which currently is the law concerning the process for enacting pay increases through the commission process.

Senator CHAFEE. I see.

Ms. HOLIDAY. The Commission did not make salary recommendations at that time, but proposed the subsequent Commission, which did make recommendations, which were enacted,

Senator CHAFEE. Which were not enacted.

Ms. HOLIDAY. The Commission's recommendations actually— you are correct—were not enacted, but a lesser amount recommended by the President was enacted,

Senator CHAFEE. Oh, you mean back then.

Ms. HOLIDAY. Back in 1985, as I recall. 1986.

Senator CHAFEE. Well I am greatly disturbed over the pay situation. And my view is that if the Congress wants to commit suicide that is their business. But it shouldn't apply to the Executive and the Judicial. So I am—and I hope I get some support—going to submit legislation to de-link the salaries and go ahead with the pay raises for the Executive and the Judicial.

In the course of that Commission, did you find some material that, for somebody like me who is trying to foster this thing, would be helpful, i.e., departure of talented people due to inadequate pay?

I went through the Cutler Report and did not find as much material there on that particular subject as I would like. Have you got some information on that. Going back, and I suppose this is digging back into record, but do you have anything in particular that would be helpful in fostering my case?

Ms. HOLIDAY. I am sure we could produce for the Senator some materials that were accumulated back in 1985. And at that time the record we were seeking to make was the fact that there was indeed such a decline in the value of the salaries of Members of Congress, as well as the other two branches of Government, such that we were losing good people and our ability to attract them to Government. And there is a substantial record to that effect which we would be happy to see what we could uncover from the archives and provide to you.

Senator CHAFEE. Well I don't want you to dig way back into musty archives. But you are the person that I should talk to? You were the executive director.

Ms. HOLIDAY. That is correct. I can help you in that regard, sir.

Senator CHAFEE. All right. Thank you very much.

Senator MOYNIHAN. Can I say to my friend, Senator Chafee, that I was Secretary in the not to different circumstance to a Cabinet committee that President Kennedy established in 1961 that the then John Macy, Chairman of the Civil Service Commission, headed, and Robert McNamara, and the Secretary of Labor, which established, as we thought at the time, the principle of comparability, in that Federal executive salaries should be comparable to equivalent activities outside. And we haven't done that up until we get to the sort of GS–15 level and that has been lost since the Kennedy time.

If you were looking for evidence in your case, it may not be so much people who leave as people who don't come.

Senator CHAFEE. Well that is the problem. It is harder to document those.

Senator MOYNIHAN. Yes.

Well the head of the National Institutes of Health will tell you that it has been 10 years since a class A scientist has joined their ranks, and so forth, but I will leave that to your pursuits.

Could I just say, because I think that while Senator Pryor is still here, Mr. Mullins, I am not going to ask you about this report in the Washington Post, but would you put the Department—and perhaps Miss Holiday will put the Department on notice—that we think there is going to be a head of the Internal Revenue Service one of these days. Isn't that right?

Mr. MULLINS. We hope so.

Senator MOYNIHAN. We haven't abolished that position as an economy measure.

Mr. MULLINS. No, sir.

Senator MOYNIHAN. All right. Well when he comes forward we are going to ask him, we are going to want to know what about this.

Mr. MULLINS. Yes.

Senator MOYNIHAN. The IRS is evidently not able to do its job. It is not able to carry out the provisions of the Taxpayers' Bill of Rights, which Senator Pryor pressed with great effort in the last

Congress successfully. That is the law. And we learned from the GAO that 40 percent of the answers given on the telephone to taxpayer inquiries are wrong. What do you do? Do you prosecute people who act on good faith, accept the advice of the IRS as to what the law is and then it turns out not to be the law? How are you going to handle that?

Ms. HOLIDAY. Mr. Chairman, I am not personally familiar with the article to which you refer.

Senator MOYNIHAN. Read the front page of the Washington Post before you come up for a confirmation hearing.

Ms. HOLIDAY. I will do so next time, sir.

I do understand, however, having heard radio accounts today, that there is being some provision made if erroneous advice is given, but I will be happy to look into that for you, sir.

Senator MOYNIHAN. I just offer it as a professional matter. What do you do? It says, "The GAO has told a Congressional hearing yesterday that the IRS telephone assistors give incorrect answers 40 percent of the time." That is getting pretty close to random. But if you take the advice of the IRS, and the IRS is wrong, do you then put the poor taxpayer in jail?

Ms. HOLIDAY. I would hope that that would not be the case, sir. And I would be happy to check into that for you. I consider that unacceptable as well, and think that there should be some provision made if erroneous advice is given. And my understanding is they are making some adjustments in that regard.

Senator MOYNIHAN. Could we ask that you would look into this and send us something in writing as to what your judgment is?

Ms. HOLIDAY. Surely. I would be happy to do that.

[The information appears in the appendix.]

Senator MOYNIHAN. Because what happens here is, are we dealing with an unfailing formula for bad government as to not to pay the people who you ask to do the work? What was the intent of the Treasury? The article contains only a paragraph. And I guess we would like either of you to let us know. Why don't you do, Miss Holiday, as you speak for the whole Department?

It says here, and I will just read it, and then I will be through. "According to Congressional sources, the agency last year proposed requesting a supplemental appropriation of $170 million from the Congress. It is apparent that the Treasury Department cut the request back to $73 million, then asked the Office of Management and Budget for permission to send the request to Capitol Hill; the request was denied."

Now was it OMB's view, you know, that they did not like the Taxpayers' Bill of Rights, then, therefore, they were not going to enforce it? Or we don't audit the Fortune 500. We don't look after the complex issues of tax. That attains to the condition of not enforcing the law, not executing the laws.

Will you tell whoever he, she, it is that succeeds Mr. Gibbs, if there is such a person, that we would want to know about that? Really, we would want to know about that.

Senator CHAFEE. Well let me just slow up here a minute, Mr. Chairman. Some of this goes back to what we do right here in the Congress, and I am getting back to the pay raises.

Senator MOYNIHAN. That is right.

Senator CHAFEE. There isn't any of us who, in our local communities, haven't seen our top people in the IRS leave. And if we are going to sit on this ridiculous situation where we restrict our pay to $89,000, and therefore the top officials of the government are restricted to that, yet we can get honorarium on top of that to get us up toward $126,000, and we have got all kinds of prestige and anulments that go with it, and they don't. Now we sit here and harangue the representatives of the IRS or the Treasury Department for not doing a better job. You get what you pay for in this business. And until we are willing to pay decent money to Federal employees, we are going to get this and we are going to get worse. And you yourself have cited so aptly, Mr. Chairman, the fact of the NIH, what is happening out there, and in other areas. And it is something we have brought on. Not the Executive branch. We brought it on ourselves. And what happens out there? The pay raise gets defeated and we haven't yet gotten to this de-linkage. Can I count you as a vote on my bill.

Senator MOYNIHAN. You can count me as a vote on de-linkage, but you can also count me in wanting to know why OMB did not think IRS needed any extra money when clearly they did.

Senator CHAFEE. Well again, I would just like to say on that, everybody wants more money.

Senator MOYNIHAN. Senator Chafee.

Senator CHAFEE. And I think it is one of the games of this country that in a time of prosperity, of every dollar we spend we have borrowed 17 cents.

Senator MOYNIHAN. Senator Chafee, have you read the Washington Post this morning?

Senator CHAFEE. Now is that a compulsory requirement. [Laughter.]

Senator MOYNIHAN. Look, we have a responsibility to see that the IRS is funded to the level where it can do its work—and the Executive Branch has the responsibility to see that it requests those levels. I mean, it is reciprocal. We both are in this. But to read that only one-third of the Fortune 500 companies are now audited is to ask, you know, what's going on here? And I will leave it at that.

Senator CHAFEE. Let me just say one more word if I might. One of the encouraging aspects of the Tax Reform measure that we did, that you were so active, as was Senator Pryor, two years ago, 1986, was that by getting rid of the differential between capital gains and ordinary income we, in effect, have increased the capacity of the IRS to conduct audits by about 30 percent. In other words, you remember Mr. Gibbs testifying here that about 30 percent of the time of the agents was spent on trying to tell the difference in a return between capital gains and ordinary income. Now that we eliminate that differential, after a while—and there are these cases in the pipe line that we acknowledge—but after a while we are going to get 30 percent more audits out of the same force, roughly there.

Senator MOYNIHAN. Can we count you then as being unalterably opposed to President Bush's proposal to reinstitute the differential?

Senator CHAFEE. You can put me down as exceedingly lukewarm towards it and not supportive.

Senator MOYNIHAN. Exceedingly lukewarm. Mr. Pryor.

Senator PRYOR. Before you ring down the gavel, as we have talked about the IRS, just a word to our friends, Mr. Mullins and Miss Holiday, I for the last two years have had a fascinating role of chairing the Subcommittee of this full committee of Oversight of the Internal Revenue Service. And I would like to say publicly as I have said it before privately that I truly look at Larry Gibbs, now departed, as truly one of the finest Commissioners of the Internal Revenue Service that this country has had in the 124 year history of the tax collection system in this country.

I think too that the IRS is, as Senator Moynihan has pointed out—I think I would go further—and I would say that the IRS as a tax collection system in a free society is at perhaps the most critical juncture of its entire history. And the next Commissioner, whoever that individual will be, may be the most important one single individual chosen by this Administration, especially within the Department of the Treasury. And whatever pipelines you have, whatever decision making capabilities that each of you respectively may be engaged in, I would just like to strongly recommend that whoever is chosen here would be a person I would suggest is in the same mold as Mr. Gibbs. Not only did he look at treating the taxpayer as a customer, as he said many hundreds of times, he also brought I think increased morale to the IRS in spite of many of the problems that Senator Moynihan and Senator Chafee have just alluded to.

I think this appointment is going to be critical. And whoever that individual is going to be, he or she will be coming before this committee for confirmation.

Senator MOYNIHAN. I think we would all join those sentiments. And now I would like to thank our nominees. Miss Holiday and Dr. Mullins, we congratulate you for having been nominated by the President. We won't ask you to leave the room, but I shall proceed to ask for a vote.

[Whereupon, at 10:47 a.m., the hearing was concluded.]

APPENDIX

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Questions to General Counsel Holiday
Submitted by Senator Moynihan During Confirmation Hearings

1. Why isn't OMB funding requests for the IRS?

Each fall, OMB evaluates budget proposals for all Treasury bureaus at the same time. Similar to the budget review process in Treasury, as well as in the Appropriation Subcommittees, OMB budget deliberations for each Treasury bureau are made within the context of total resource availability. In the post-Gramm-Rudman era, that process has taken on more exacting requirements.

For FY 1990, the Internal Revenue budget request includes not only funds for maintaining current levels of service, but also for a variety of program initiatives considered most important for improving the IRS mission of accurate and responsive tax administration. Although nearly all of the IRS budget, as well as those of the other Treasury bureaus, is contained within the "flexible freeze" category and subject to negotiation, the $289.1M increase (5.6 percent) approved by OMB for IRS is quite favorable compared with the average increase of 0.5 percent for all other Treasury organizations.

A review of IRS funding from 1982 to 1990 shows that, in constant dollars, the IRS budget growth of 47.2 percent over that period is nearly double the 26.3 percent increase for all Federal Government over the same time period.

2. Please provide information on the cash crisis.

There have been recent references to an IRS cash crisis of somewhere between $300 million and $500 million. As it was articulated by former Commissioner Gibbs on several occasions, the various amounts cited are really differences between the IRS appropriated budget for FY 1989 and a more ideal budget from the Commissioner's perspective.

Well over 50 percent of the highest "cash crisis" estimate pertains to a variety of discretionary program increases not approved by the Administration or the Congress. Among these are $150 million to audit more tax returns, neither assumed nor required by the November 1987 Bipartisan Budget Agreement,

another $100 million requested for information system initiatives and disapproved by the Congress, and about $75 million for other compliance and service initiatives, most of which are now being requested for FY 1990.

Also, the "cash crisis" estimates included a variety of costs being absorbed by all government agencies, including the Congressionally required absorption of the January 1989 pay raise, more competitive salary rates for various occupations in high cost labor markets, and increased health, retirement, and postage costs.

3. The IRS is reportedly giving wrong answers to taxpayer requests for information 40 percent of the time. What is the legal impact on taxpayer filing of such misinformation? What procedures can taxpayers follow to make sure they get correct information?

Under prior law, the Commissioner had discretionary authority to impose penalties notwithstanding taxpayer reliance on erroneous advice from IRS personnel. Effective January 1, 1989, Code section 6404 (Tab II) (as amended by TAMRA) calls for the Service to "abate any portion of any penalty or additions to tax attributable to erroneous" written advice from an IRS employee if the advice

a) was given in the IRS employee's official capacity,

b) was in response to a written request from the taxpayer, and

c) the amounts of penalty and addition to tax in question did not result from a taxpayer's failure to provide accurate information.

Preliminary regulations have been circulated and are scheduled for completion by May 11 as required by statute.

As a matter of administrative policy, the Service will also grant relief from certain penalties stemming from erroneous advice given by Service employees on the taxpayer service toll-free telephone system. Publication 1, Your Rights as a Taxpayer, (Tab III) and an April 14, 1988, News Release (TAB IV) outline Service policy on granting penalty waivers if taxpayers establish "reasonable cause" for taking certain positions on their returns. The following information, if included in a taxpayer's request for waiver, helps establish the requisite reasonable cause:

a) efforts made to find answers in IRS forms, instructions, publications, recorded messages, etc.,

b) questions asked, specific facts given and the answer received, and

c) the name of the IRS employee who provided the advice and the date and time of the call.

In response to your question regarding procedures taxpayers can follow to make sure they get correct information, I would like to point out that the Internal Revenue Service is working to improve the quality of service provided to taxpayers. When taxpayers call IRS's toll-free information service, they can help IRS representatives provide accurate, complete answers to their tax questions by having the following information available:

1. The tax form, schedule, or notice to which the question relates.

2. The facts about their situation. The answer to the same question often varies from one taxpayer to another because of differences in their age, income, or whether they can be claimed as a dependent, for example.

3. The name of the publication or other source they used to look for the answer.

If the taxpayer does not fully understand the answer he receives, or feels that the IRS assistor may not fully understand his question, the IRS assistor needs to be told this. The assistor has been directed to spend additional time on the telephone with the taxpayer to be sure he has answered the question fully and in a manner most helpful to the taxpayer.

TREASURY NEWS
Department of the Treasury • Washington, D.C. • Telephone 566-20

October 21, 1988

Edith E. Holiday
Assistant Secretary of the Treasury
(Public Affairs and Public Liaison) and
Counselor to the Secretary

Edith (Ede) E. Holiday was confirmed by the United States Senate as Assistant Secretary of the Treasury for Public Affairs and Public Liaison on October 19, 1988 and was sworn into office by Secretary Nicholas F. Brady on October 20, 1988. President Reagan had nominated Ms. Holiday for this position earlier this month. Ms. Holiday will also continue to serve as Counselor to the Secretary, a role she assumed after joining the Department of the Treasury in September 1988.

Prior to joining the Department, Ms. Holiday was Chief Counsel and National Financial and Operations Director for the Bush/Quayle 88 Presidential Campaign. Previously she served as Director of Operations for George Bush for President and Special Counsel for the Fund for America's Future.

In 1984 and 1985, Ms. Holiday was Executive Director for the President's Commission on Executive, Legislative and Judicial Salaries. She practiced law with the firm of Dow Lohnes & Albertson in 1983 and 1984 and with the firm of Reed Smith Shaw & McClay from 1977 to 1983. Ms. Holiday also served as Legislative Director for then U.S. Senator Nicholas F. Brady.

Ms. Holiday was graduated from the University of Florida (B.S., 1974; J.D., 1977). Born in Middletown, Ohio, she resides in Atlanta, Georgia and is married to Terrence B. Adamson. She is the daughter of Mr. and Mrs. Harry Holiday, Jr., formerly of Middletown, Ohio, currently of Delray Beach, Florida and Highlands, North Carolina.

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

February 23, 1989

The Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Edith E. Holiday, who has been nominated by President Bush for the position of General Counsel of the Department of the Treasury.

We have reviewed the report and have also obtained advice from the Department of the Treasury concerning any possible conflict in light of its functions and the nominee's proposed duties. The report is supplemented by the enclosed letter (with its enclosures) from the designated agency ethics official at the Department of the Treasury, dated February 21, 1989. As indicated therein, Ms. Holiday has agreed to recuse herself from participation in particular matters involving her husband's law firm, Dow, Lohnes & Albertson of Atlanta, Georgia, and to divest herself of her holdings in First Financial Bancorp.

Based on the foregoing, we believe that Ms. Holiday will be in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Frank Q. Nebeker
Frank Q. Nebeker
Director

Enclosures (2)

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

MAR 14 1989

Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by David W. Mullins, Jr. who has been nominated by President Bush for the position of Assistant Secretary for Domestic Finance, Department of the Treasury.

The report has been reviewed and advice has been obtained from the Department of the Treasury concerning any possible conflict in light of its functions and the nominee's proposed duties. Enclosed is a letter dated March 14, 1989, from Treasury's ethics official which describes the commitment by Mr. Mullens to recuse himself from participation in matters affecting Harvard University and, pending its payment of an account due the nominee, from matters affecting Citibank of New York. Based on these commitments, it appears that Mr. Mullins will be in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Frank Q. Nebeker
Director

Enclosures

TREASURY NEWS
Department of the Treasury • Washington, D.C. • Telephone 566-2041

October 7, 1988

David W. Mullins, Jr. Joins Treasury

Secretary of the Treasury Nicholas F. Brady today announced that David W. Mullins, Jr. joined the Department of the Treasury. Dr. Mullins will oversee matters pertaining to domestic finance policy.

Prior to joining the Department, Dr. Mullins was a Professor of Business Administration at the Harvard University Graduate School of Business Administration. He received a B.S. in administrative sciences from Yale University and an S.M. in finance from the Sloan School of Management at the Massachusetts Institute of Technology. After earning a Ph.D. in finance and economics at M.I.T., he joined the faculty of the Harvard Business School where he taught finance in the MBA, executive and doctoral programs.

Professor Mullins was faculty chairman of Harvard's Corporate Financial Management program, an executive program for senior financial officers of major corporations. In addition, he has served as course head for the first year MBA finance course. He taught the Capital Markets course in the MBA program.

Professor Mullins has been a consultant to a wide variety of firms and governmental agencies and has taught in numerous executive training programs in the U.S. and abroad. He recently served as Associate Director of the Presidential Task Force on Market Mechanisms.

In teaching, research, and consulting, Professor Mullins specialized in capital markets and corporate finance.

STATEMENT OF SENATOR SAM NUNN ON THE NOMINATION OF EDITH E. HOLIDAY TO BE GENERAL COUNSEL OF THE DEPARTMENT OF THE TREASURY

I am particularly pleased today to present Ede Holiday to the members of the Finance Committee. Colleen and I have known Ede and her husband, Terry Adamson, for many years. As her friend and as a great admirer, I am delighted to have the opportunity to lend my support to her nomination as General Counsel to the Treasury Department.

I also want to congratulate Terry and her on the birth of their daughter, Kate, on February 2. Mr. Chairman, it may not be known to the Committee, but Ede is a Republican and Terry is a Democrat. My only question to Ede is, "Can I count on Kate's vote?"

Since October, 1988, Ede has been an Assistant Secretary of the Treasury for Public Affairs and Counselor to the Secretary. After he was confirmed by this body last year to be Secretary of the Treasury, one of Nick Brady's first acts was to recommend Ede to the President for this important and responsible position. By all accounts, she has proven to be an able and pragmatic public official.

Prior to this, she was Chief Counsel and National Financial and Operations Director for the Bush-Quayle 1988 Presidential campaign and served as Director of Operations for George Bush for President.

Ede began her career in Washington with Nick Brady when he served in the Senate. As his Legislative Director and as the Executive Director for the Commission on Executive, Legislative,

and Judicial Salaries which Nick chaired, Ede earned his respect and his confidence.

Prior to her public service career, Ede gained valuable experience as an attorney with the firm of Dow, Lohnes & Albertson in Atlanta and with Reed, Smith, Shaw & McClay here in Washington.

Ede has both the political savvy and legal skills to serve in this sensitive post with distinction. It is a special privilege for me as her homestate Senator, and as her friend, to recommend Ede Holiday to this committee and to my colleagues in the Senate. I urge her prompt confirmation as General Counsel to the Treasury Department.

CONGRESSIONAL RECORD ARTICLE SUBMITTED BY SENATOR PRYOR

THE SELLING OF AMERICA—BY FSLIC; AGENCY OFFERS U.S. PROPERTIES TO FOREIGNERS TO AID S&L RESCUE

(By Kathleen Day)

The largest landowner in America put its property on the block in London last week to try to get foreigners to help pay the cost of rescuing the U.S. savings and loan industry.

The Federal Savings and Loan Insurance Corp., which has inherited an estimated $10 billion in real estate from failed thrifts, offered the entire portfolio to European investors who might like to own a U.S. shopping center, bowling alley, motel or office building.

More than 150 wealthy investors attended the seminar, which was held at the U.S. Embassy. Potential bidders were lured by advertisements that said FSLIC's real estate could be purchased at "extremely advantageous" prices.

"The response has been tremendous," said Ken Miller, a New York real estate marketer who represents FSLIC in Europe.

Another real estate seller from the United States who has been heavily tied to the S&L crisis also participated in the seminar. Texas developer Craig Hall offered property in Dallas, Reston, Va., and Cockeysville, Md. Hall became a center of controversy two years ago when Speaker of the House Jim Wright (D-Tex.) pressured federal S&L regulators at the FSLIC to ease up on their efforts to make Hall repay loans to ailing S&Ls.

Savings and loan institutions were created to promote home ownership in the United States, but the S&L crisis has become so severe that the industry may well end up playing a role in what has been described as the selling of America.

In the mid-1980s, Congress and the Reagan administration deregulated the S&L industry, allowing it to enter the commercial real estate business and other new ventures. Many of the deals foundered, bankrupting S&Ls and leaving the government to pick up the pieces.

The hundreds of S&Ls that have failed since 1980 have left thousands of repossessed properties in the lap of the FSLIC, an amount of real estate so vast and of such questionable value that the government is having trouble disposing of it.

The government has been trying to sell the property in this country. But because much of it is in regions such as Texas, where the bottom has fallen out of the real estate market, the effort has had little success.

The agency hopes it will have better luck abroad. Cash from the sales would be used to help close hundreds of ailing S&Ls and pay of depositors.

But the prospect of the government selling billions of dollars in real estate to oversee investors comes at a time of rising concern over foreign acquisition of U.S. property.

No one knows exactly how much real estate is now in foreign hands because there is no comprehensive, continuing system for tracking. At this point it is believed to encompass less than 2 percent of all property holdings in the United States. But the percentage, particularly in a few key markets, is growing steadily.

In downtown Los Angeles, for example, nearly three-quarters of the office market will soon be owned by foreigners, mostly Japanese, up from 64 percent in 1988 and 51 percent in 1987, according to real estate industry studies.

Foreign investors, mostly Japanese, British, Canadian and Dutch, own 23 percent of the office market in the District. Foreigners own 10 percent of the property in Maine and 25 percent in downtown Atlanta. They own large stakes in San Francisco and New York City, including many landmark buildings.

The trend has divided America philosophically. Those who are uncomfortable with it say, in the words of Rep. John Bryant (D-Tex.), that America "is selling off its family jewels to pay for a seven-year night on the town." But others find a stabilizing trend in foreign investments—those who own property in the United States will want to protect the nation's interests, they reason.

"Why shouldn't we be selling property overseas?" said bank board spokesman Karl Hoyle.

Miller's company, Miller Marketing Network Ltd., will get a fee for every property it sells on behalf of the FSLIC. The properties can be purchased separately or in bundles, according to bank board officials.

"We have direct access with the folks in Washington and they can be flexible," Miller Marketing spokesman Bruce Mortimer told the audience attending the London seminar. The FSLIC officials had no comment except to confirm that Miller represents the agency in selling property.

The FSLIC has offered a few properties abroad before, but never on a grand a scale or with so much secrecy—it revealed its role to bidders only minutes before the seminar began. Among the FSLIC properties Miller offered last were:

Sugarloaf Hunting Lodge, on 18,000 acres in Wichita Falls, Tex., offered for $2.5 million.

Greentree Shopping Center in Naples, Fla., a facility on 24 acres selling for $7.25 million.

The Mutiny Hotel in Coconut Grove, Fla, selling for $9.5 million.

Miller's presentation opened with a slide show of America. The slides, some of which were upside down, were accompanied by music—a crackling version of "New York, New York" from a tape recorder held up to a microphone by Miller, according to one person at the conference.

Miller has said in the past that many of his clients in London are "the wealthy unconnected," including ethnic minorities who feel snubbed by the British establishment. But he said last week's seminar attracted a broad range of prospective buyers.

Paul Mitchell, a partner in the international real estate firm of Knight Frank & Rutley who attended to seminar, said he was particularly interested in new office buildings in major cities and in regional shopping centers.

He said that his customers range from individuals to large pension funds, and that if they all were able to buy all of the U.S. properties they wanted, the investments would amount to billions of dollars.

"The problem is whether you can find enough of the right quality," Mitchell said. "There's plenty of rubbish out there."

Miller said he plans similar seminars in West Germany and Austria, and possibly Japan, later this year.

The FSLIC's role was kept secret until the day of the seminar. Participants were told only that "principals of the largest real estate portfolio in the world will be presenting their American assets exclusively at this conference."

In fact, no one from the FSLIC attended. Dawn White, chief of corporate assets at the FSLIC, had to cancel her trip at the last minute because the FSLIC was being reorganized, Miller said. White did not return telephone calls and a bank board spokesman said she was unavailable for comment.

Miller has several real estate companies he operates from New York. In addition to Miller Marketing, which markets real estate and brokers deals, he said he has a real estate advertising company called Miller, Addison & Steele.

Questioned about Addision and Steele, Miller said they became his partners 12 years ago when he formed the company but "had died.'

Eventually Miller conceded that Addison and Steele "have been dead for 200 years."

Joseph Addison and Sir Richard Steel, who lived in the 1700s, are best known for having founded several gossip and literary journals, including the Tatler and the Spectator.